IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1172 OF 2002

Dr.Sanjay C. Agarwal ...Appellant
Vs.
Nana Tukaram Bombale & Ors. ...Respondents

Mr. Nitin Jamdar, Advocate for the Appellant
Mr. Kinikar, Advocate i/b. Smt. Rathina Maravarman for Respondent Nos.3A to 3D.
None for Respondents 1 and 2

CORAM: SMT.ROSHAN DALVI,J.
DATED: 25TH JUNE, 2007

P.C.

1. This Appeal challenges the judgment of the Additional Member MSCT, Pune dated 4th August, 200 dismissing the claim of the Appellants filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.395530/- on account of injuries sustained by him in a motor vehicle accident on 4th July, 1993at about 8.15 a.m. On the main street at Mahatma Gandhi Road, near Hotel Tej Rgency in Camp, Pune.

2. The Appellant is a Cardiologist/Doctor who was riding his Kinetic Honda Scooter bearing No.MH-12-D/0070 from his residence to Ruby Hall Clinic for a visit. The accident took place on a one way street/road. The road is 40 ft. in width, which runs from North to South. The Appellant proceeded from South to North on his Scooter. The panchanama shows that the spot of the accident was 15ft from the Eastern end of the road. It is, therefore, 25 ft. from the Western end. Certain vehicles are stated to have been parked on the road. Particulars of the vehicles other than the vehicle involved in the accident is not given. The vehicle involved in the accident which was a car was parked perpendicular to road and was being reversed. Whilst being reversed it hit the Appellant's Scooter causing the accident in which the Appellant suffered injuries.

3. The Appellant examined himself. He has not examined other independent eye witnesses on the road. He has deposed that he was not coming in speed. He has denied that the reversing car driver sounded any horn. He has denied that he was in any hurry, though he has admitted that he was to go on a visit.

4. The learned Judge has held that it was a case of rash and negligent driving, when the accident took place and

hence, the appellant contributed to the negligence and is not entitled to claim any compensation. Only this narrow aspect is required to be seen in this Appeal. The Appellant's Advocate rightly drew this Court's attention to paragraphs 8,9 and 10 of the Judgment. Only if a contributing negligence of the Appellant is not seen, the question of compensation will arise. In the aforesaid paragraphs the learned Judge has vividly described the incident. He has considered the aforesaid admissions and rejected the denials of the Appellant. It has to be seen whether the evidence is correctly appreciated.

5. The accident took place at about 8.15 a.m. There is no evidence of extent of traffic on the road. There is no evidence about the vehicles parked on the left hand side of the road. Similarly there is no evidence about the absence of vehicles on the left side of the road also. In a one way street/road the Appellant was going from South to North and the reversing car was to the East. The Appellant was also more towards the East as shown in the spot panchanama Exhibit-23.

6. It is the contention on behalf of the Appellant that in a one way street the Appellant should be entitled to drive on either side and that there is no wrong side of the road. That will be correct. However, it would have to be seen whether

prudently, at the relevant time the Appellant could have legitimately turned his vehicle into that road from the right side. There is no evidence adduced by the Appellant/Applicant that there were any vehicles parked on the left side of the road which constrained him to go towards the right side of the road, which he could do since it was a one way street. The FIR an the spot panchanama Exhibit-22 and 23 do not show this fact. Though the Appellant/Applicant could travel on the right side of the road, the driver of the reversing car also could reverse legitimately as he did. Hence, if the Appellant/Applicant was not going in speed, as is his case, he could have averted the accident. It is for the Appellant/Applicant to have corroborated his evidence relating to his speed. That fact is also absent. The street is wide enough – it is 40 ft. wide. The Appellant's/Applicant's evidence that the owner of the car suddenly turned the car in reverse without blowing horn, which dashed against his Scooter has also not been corroborated. The observation of the learned Judge in para 9 of the Judgment that the owner of the reversing car was within his limits of his area and in the early morning hours would not contemplate much traffic stands to reason.

7. Exception is taken to the observations of the learned Judge that the drivers of the vehicles are not allowed to ply

the vehicle on the wrong side of the road in a one way street or whether the Appellant/Applicant should have kept on the proper side of the road i.e on the left side of the road and not driven on the wrong side of the road since it was a one way street. Those observations are immaterial. The Appellant's/Applicant's evidence requires to be corroborated which is not done. Hence, the rejection of the Appellant/Applicant's evidence about his speed or the speed of the offending car has to be accepted. There is nothing perverse in the observation of the learned Judge. Hence, the conclusion that the Appellant/Applicant could have had a speed which caused the accident cannot be rejected. Nothing is shown to set aside the Judgment.

8. Appeal dismissed.

(SMT. ROSHAN DALVI, J.)